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Counsel for Mark K. Okada and

Affiliated Parties

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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	:	
In re:	:	Chapter 11
	:	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	:	Case No. 19-34054-sgj11
	:	
Reorganized Debtor.	:	
	:	
-----	X	
	:	
MARC S. KIRSCHNER, AS LITIGATION	:	
TRUSTEE OF THE LITIGATION SUB-TRUST,	:	
	:	
Plaintiff,	:	
	:	Adv. Pro. No. 21-03076-sgj
v.	:	
	:	
JAMES D. DONDERO; MARK A. OKADA; SCOTT	:	
ELLINGTON; ISAAC LEVENTON; GRANT	:	
JAMES SCOTT III; STRAND ADVISORS, INC.;	:	

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

NEXPOINT ADVISORS, L.P.; HIGHLAND
 CAPITAL MANAGEMENT FUND ADVISORS,
 L.P.; DUGABOY INVESTMENT TRUST AND
 NANCY DONDERO, AS TRUSTEE OF DUGABOY
 INVESTMENT TRUST; GET GOOD TRUST AND
 GRANT JAMES SCOTT III, AS TRUSTEE OF GET
 GOOD TRUST; HUNTER MOUNTAIN
 INVESTMENT TRUST; MARK & PAMELA
 OKADA FAMILY TRUST – EXEMPT TRUST #1
 AND LAWRENCE TONOMURA AS TRUSTEE OF
 MARK & PAMELA OKADA FAMILY TRUST –
 EXEMPT TRUST #1; MARK & PAMELA OKADA
 FAMILY TRUST–EXEMPT TRUST#2 AND
 LAWRENCE TONOMURA IN HIS CAPACITY AS
 TRUSTEE OF MARK & PAMELA OKADA
 FAMILY TRUST–EXEMPT TRUST #2; CLO
 HOLDCO, LTD.; CHARITABLE DAF HOLDCO,
 LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND
 DALLAS FOUNDATION; RAND PE FUND I, LP,
 SERIES 1; MASSAND CAPITAL, LLC; MASSAND
 CAPITAL, INC.; AND SAS ASSET RECOVERY,
 LTD.,

 Defendants.

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THE OKADA PARTIES’ MOTION TO DISMISS AMENDED COMPLAINT

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY COURT JUDGE:

Mark K. Okada, The Mark & Pamela Okada Family Trust – Exempt Trust #1 (“MPO Trust 1”) and Lawrence Tonomura in his Capacity as Trustee, and The Mark & Pamela Okada Family Trust – Exempt Trust #2 (“MPO Trust 2”) and Lawrence Tonomura in his Capacity as Trustee (collectively, the “Okada Parties”), defendants in the above captioned adversary proceeding, hereby submit *The Okada Parties’ Motion to Dismiss Amended Complaint* (the “Motion”),² and respectfully state as follows:

Pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, and Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and for the reasons set forth in the accompanying *Memorandum of Law in Support of The Okada Parties’ Motion to Dismiss Amended Complaint* and the *Appendix in Support of The Okada Parties’ Motion to Dismiss Amended Complaint*,³ filed contemporaneously herewith and all of which are incorporated herein by reference, the Okada Parties request that the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) dismiss with prejudice the causes of action asserted against the Okada Parties in the Amended Complaint (the “Claims”):

- Count I (against Mr. Okada, MPO Trust 1, and MPO Trust 2) – Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers;
- Count II (against Mr. Okada, MPO Trust 1 and MPO Trust 2) – Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers;
- Count XIV (against Mr. Okada) – Breach of Fiduciary Duty in Connection with Fraudulent Transfers and Schemes; and

² The Motion supersedes *The Okada Parties’ Motion to Dismiss* [Dkt. No. 125].

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Memorandum of Law in Support of The Okada Parties’ Motion to Dismiss Amended Complaint*.

- Count XXXV (against Mr. Okada) – Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law in Connection With Fraudulent Transfers and Schemes.

WHEREFORE, the Okada Parties respectfully request that the Bankruptcy Court enter an order, substantially in the form attached hereto as Exhibit A, (i) granting the Motion; (ii) dismissing with prejudice the Claims asserted against the Okada Parties; and (iii) granting the Okada Parties such other and further relief as is just and proper.

Dated: July 11, 2022
New York, New York

/s/ Brian D. Glueckstein
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*Counsel for Defendants Mark K. Okada,
The Mark and Pamela Okada Family Trust –
Exempt Trust #1 and Lawrence Tonomura as
Trustee, and The Mark and Pamela Okada
Family Trust – Exempt Trust #2 and
Lawrence Tonomura as Trustee*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 11, 2022, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on the Plaintiff through its counsel of record.

/s/ Brian D. Glueckstein
Brian D. Glueckstein

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	:	Case No. 19-34054-sgj11
	:	
Reorganized Debtor.	:	
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	X	
	:	
MARC S. KIRSCHNER, AS LITIGATION	:	
TRUSTEE OF THE LITIGATION SUB-TRUST,	:	
	:	
Plaintiff,	:	
	:	Adv. Pro. No. 21-03076-sgj
v.	:	
	:	
JAMES D. DONDERO; MARK A. OKADA; SCOTT	:	
ELLINGTON; ISAAC LEVENTON; GRANT	:	
JAMES SCOTT III; STRAND ADVISORS, INC.;	:	
NEXPOINT ADVISORS, L.P.; HIGHLAND	:	
CAPITAL MANAGEMENT FUND ADVISORS,	:	
L.P.; DUGABOY INVESTMENT TRUST AND	:	
NANCY DONDERO, AS TRUSTEE OF DUGABOY	:	
INVESTMENT TRUST; GET GOOD TRUST AND	:	

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

GRANT JAMES SCOTT III, AS TRUSTEE OF GET :
GOOD TRUST; HUNTER MOUNTAIN :
INVESTMENT TRUST; MARK & PAMELA :
OKADA FAMILY TRUST – EXEMPT TRUST #1 :
AND LAWRENCE TONOMURA AS TRUSTEE OF :
MARK & PAMELA OKADA FAMILY TRUST – :
EXEMPT TRUST #1; MARK & PAMELA OKADA :
FAMILY TRUST–EXEMPT TRUST#2 AND :
LAWRENCE TONOMURA IN HIS CAPACITY AS :
TRUSTEE OF MARK & PAMELA OKADA :
FAMILY TRUST–EXEMPT TRUST #2; CLO :
HOLDCO, LTD.; CHARITABLE DAF HOLDCO, :
LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND :
DALLAS FOUNDATION; RAND PE FUND I, LP, :
SERIES 1; MASSAND CAPITAL, LLC; MASSAND :
CAPITAL, INC.; AND SAS ASSET RECOVERY, :
LTD., :
 :
Defendants. :
 :
 :
 :
----- X

ORDER GRANTING THE OKADA PARTIES' MOTION TO DISMISS
AMENDED COMPLAINT

Upon consideration of *The Okada Parties' Motion to Dismiss Amended Complaint* (the "Motion"), the *Memorandum of Law in Support of the Okada Parties' Motion to Dismiss Amended Complaint*, and the *Appendix in Support of the Okada Parties' Motion to Dismiss Amended Complaint*, any response thereto, the pleadings, and the arguments presented by the parties before this Court, the Court hereby orders that the Motion is GRANTED.

Pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, and Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, the Court hereby dismisses, with prejudice:

- Count I – Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers, as against Mark K. Okada, MPO Trust 1, and MPO Trust 2;
- Count II – Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers, as against Mark K. Okada, MPO Trust 1 and MPO Trust 2;
- Count XIV – Breach of Fiduciary Duty in Connection with Fraudulent Transfers and Schemes, as against Mark K. Okada; and
- Count XXXV – Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law in Connection With Fraudulent Transfers and Schemes, as against Mark K. Okada.

SO ORDERED.

Dated: _____, 2022

HONORABLE STACEY G. C. JERNIGAN
UNITED STATES BANKRUPTCY JUDGE

End of Order

Proposed form of order prepared by:

Brian D. Glueckstein (admitted *pro hac vice*)

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The Mark and Pamela Okada Family
Trust – Exempt Trust #1 and Lawrence
Tonomura as Trustee, and The Mark and
Pamela Okada Family Trust – Exempt
Trust #2 and Lawrence Tonomura as
Trustee*